

PETITION

OF

NATHANIEL AMORY,

PRAYING

Permission to institute a suit to try the validity of his claim to a tract of land.

MARCH 26, 1838.

Referred to the Committee on Private Land Claims, and ordered to be printed.

To the honorable the Senate and the House of Representatives of the United States of America in Congress assembled :

The petition of Nathaniel Amory, late of Louisiana,

RESPECTFULLY REPRESENTS :

That, confiding in the justice of the title, and relying upon the punctuality and disposition of his Government to execute, in good faith, the treaty which protected it, he purchased from the late minister to France, Edward Livingston, Esq., one of the most distinguished civilians in the country, an interest in the title given by the Spanish Government to the Baron de Bastrop, in the States of Arkansas and Louisiana.

Your petitioner further represents, that this grant was made, registered, and communicated to the Spanish Crown, by the Governor General, when the province was a part of his Catholic Majesty's dominions ; and that by the treaty of San Ildefonso, of 1800, and the proclamation of the King of Spain, in 1802, before the delivery of the province to France, all grants made by the competent authorities of Spain, were stipulated to be protected and confirmed.

Your petitioner further represents, that by the treaty of cession of Louisiana from the French republic to the United States, a stipulation was issued for the protection of private property, which the supreme court in Souldard's case, (4 Peters,) have construed to embrace equitable and legal claims, inchoate as well as perfect grants. And he further represents, that the same court have, in Perchiman's case, said, that in cases of conquest or amicable cession of a province, the rights of property are equally sacred without treaty.

Your petitioner further represents, that he claims that his title is protected by the laws of nations and solemn treaties, and that he is deprived of his rights of property, by the refusal of the Government either to confirm, or to afford him a tribunal for fair legal investigation or decision, in

your courts, appointed by the constituted authorities to decide upon the rights of individuals derived from foreign Governments, and guarantied by treaty. He further represents, that this title was presented to a board of commissioners, thirty years ago, and recommended for confirmation; that since that period, it has been before Congress without decision, until the very name, he fears, has become odious.

This petitioner further represents, that whilst the constitution protects the United States from suit in their own courts, and thus affords the opportunity for great oppression, it has not conferred the power, in giving such an odious prerogative, to forfeit or annul, by the rejection of reasonable petitions, rights of property secured by treaty. The United States may, in the exercise of that immunity, postpone, from generation to generation, a decision, and, by refusing either to confirm, authorize a judicial decision, or to sell, keep honest claimants out of the enjoyment of their property for a century; but the right ultimately to sue and to try the title by suit in court, against a purchaser from Government, cannot be taken away.

Your petitioner, with his other co-proprietors, have been postponed until he is impoverished by the pursuit, and is left, after thirty years of unavailing supplication, where the title was at that period; and in the mean time whilst the courts of law are closed against him, so long as the United States are the adverse claimants, intruders and trespassers occupy the land and may attempt, under State laws, to set up claims by prescription by occupancy, accruing whilst your petitioner is humbly praying for the privilege of a trial at law, according to the laws of nations, the treaty, and the laws of Spain.

This petitioner further represents, that the late William H. Crawford Secretary of the Treasury, caused a bill to be prepared and sent with the recommendation of the land office, to Congress, for the adjustment of these titles; which bill was passed in 1824, for the French and Spanish claimants in Missouri, and which was afterwards extended to Florida. This petitioner cannot perceive why this privilege has been extended to such claimants, and refused to those who have titles depending upon the same principles, protected by the same treaties, and subject to the same laws.

This petitioner further shows, that a law for the adjudication of these titles has been recommended by every President, demanded by every State Legislature within whose limits the land lies, and is imperatively required by justice, equity, and the faith of treaties. Such a bill has been reported at every session, and passed one or the other of the two Houses of Congress but unfortunately never passed the two Houses at any one session.

Your petitioner humbly prays that a law may be passed authorizing United States court to try and decide this title according to the laws of nations, the laws of Spain, and the treaty; and if the land belongs to him that he may have the privilege of enjoying it, after a delay of thirty years and if it belongs to the United States, that it may be surveyed and sold before it is destroyed by intruders and trespassers. Your petitioner further prays, that if the United States will not confirm the title, nor authorize to be tried in their own courts of law, that they will assume that it is public land, and survey and sell it as such, that he may then sue the purchaser, and have his rights adjudicated.

And your petitioner will ever pray.

NATHANIEL AMORY,

By his counsel, JOS. M. WHITE.

CASE.

On the 20th June, 1795, the Baron de Bastrop, desirous of encouraging the population and cultivation of the Ouachita and its neighborhood, presented a petition to the Governor General of Louisiana for a grant of land of twelve leagues square, including the Bayou de Liar and its vicinity, and on the succeeding day, the Baron de Carondelet, Governor General of Louisiana, gave an order upon said petition to the commandant of Ouachita, Don John Fathiel, to designate twelve leagues square, half on the side of the Bayou Liar, and half on the side opposite the Ouachita, on which the families which the Baron Bastrop proposed to introduce were to be placed; it being understood that no greater concession was to be given to any one than 400 square arpens, gratis, and free from all dues. This order allows the petitioner to introduce as many as 500 families, and provides that the Government will charge itself with the conducting the families from New Madrid to Ouachita, and give them such provisions as may appear sufficient for their support for six months. It also provides that, after the lapse of three years, if the major part of the establishment shall not have been made good, the twelve leagues square destined for the families which the petitioner was authorized to place there, shall be occupied by families who may first present themselves.

On the 20th of June, 1796, the same Governor General, in pursuance of the said petition, and in fulfilment of the stipulation on the part of the Government, made an order and decree, appropriating, in virtue of the authority granted him by the King, the aforesaid twelve leagues square, in order that said Bastrop may carry his plan of settlement into effect, in the manner and under the conditions expressed in the said petition and decree; to which decree was affixed a plan and description designating the metes and bounds of the said twelve leagues square; which instrument was verified by the surveyor general, Don Charles Leveau Trudeau.

On the 12th of June, 1797, de Bastrop presented another petition to the Governor General, praying permission to shut up the Bayou de Liar, and erect certain mills, necessary for the accommodation of the settlement, and also praying for a grant along the Bayou Barthelima, from its source to its mouth, of six toises on each bank, to construct upon them the mills and works which he may find necessary.

And upon the same day, the Governor General, in consideration of the advantages to the population on the Ouachita and the province in general, in virtue of the authority vested in him, granted, in the name of his Majesty, the privileges petitioned for, and also the exclusive enjoyment of six toises of ground on each side of the Bayou Barthelima; and that such mills as he may erect, the petitioner may dispose of, together with the lands adjoining, as estates belonging entirely to him, upon condition that at least one mill shall be constructed within two years, otherwise the grant to be null.

A similar petition was made, and decree granted for six toises of land on each side of the Bayou Liar, from its source to its mouth.

On the 16th of June, 1797, the Baron de Bastrop made a contract^t to furnish for the term of six months rations to the families he had introduced at the post of Ouachita, for which he was to be paid by the royal chests, at the rate of a real and a half for each ration; which contract was approved on

the same day, in the name of his Majesty, by Senior Gilbert Leonard, principal contador of the army of the province of Louisiana.

Upon the 18th of June, 1797, the same Governor General directed an order and decree to de Bastrop, providing that, whereas the intendant, from want of funds, has solicited the suspension of the last remittance of families until the decision of his Majesty, there should be no prejudice occasioned to him by the last paragraph of his decree, which provides that, if within three years the major part of the establishment on the Ouachita shall not have been made good, such families as may first present themselves shall be located within the twelve leagues destined for the settlement which he had commenced, and this shall have effect two years after the course of the contract shall have again commenced to be executed, and the determination of his Majesty shall have been made known to him.

Upon the above state of facts, the question is submitted, What are the rights of the Baron de Bastrop, under these title papers?

It appears from the title papers, of which the foregoing is an abstract, that in the commencement of the negotiation between the Baron de Bastrop and the Governor General of Louisiana, that this was intended as a contract of settlement, of which the baron was to be, what is denominated in the Spanish law, a *Poblador*, (head of a colony,) and the lands set apart were intended in part for the colonists, in such proportions and on such terms as the baron should direct, not to exceed the quantity specified, to any one settler. This species of title in all the Spanish provinces of North and South America was the common mode of disposing of all the royal domain for settlement and cultivation. It was distinguished from another species of title, which the King and viceroys gave to the grandees and nobles, called *mayorrazgo*, which was in the nature of a perpetual inheritance.

The subsequent order of the Governor General of Louisiana, was an order of survey and a concession, upon the stipulations contained in the previously arranged contract, which separated the land from the royal domain, and vested it in the baron. By the terms of the contract, it was agreed that the Spanish Government should furnish the means of transportation and subsistence for a specified period. This it is admitted the Spanish Government failed to comply with, and the baron was, by the decree of the Governor General, released from the obligation of doing anything on his part, or of suffering any forfeiture after the expiration of the period specified.

In this state, the province was transferred to the United States by treaty, with a reservation of all rights of private property.

I am of opinion, in the first place, that by the laws and usages of the Spanish Government, the papers submitted show a contract, order of survey, and concession to the Baron Bastrop, for an object of great public utility; to which were annexed what in the English law with which we are more familiar, might be called, conditions subsequent; which conditions, it is apparent, could not be executed without the concurrent act of the Spanish Government.

There is no principle of the Spanish law more clearly established than that a grant on condition cannot be vacated without a peculiar process, called *denuncia*; by which the Fiscal, or Attorney General of the crown, summoned the grantee before the tribunal, to show cause why his grant should not be set aside; which is similar to the inquest of office for a like purpose in England. The title once separated from the royal domain by an order of survey or concession, cannot be reannexed without this mode of adjudication; and, upon the trial of such a process, the Baron de Bastrop

could have shown, under the hand of the Governor General himself, that he was deprived of the ability to perform the condition, by the omissions and failures of the Government itself.

It is a well ascertained fact, that no such proceeding took place before the transfer of the province to the United States; and, in that treaty of cession, private property was reserved and protected.

The question then arises, Was this private property at the date of the cession? This question was settled in the case of Soulard, (4th Peters,) in which it was decided that property in its enlarged signification, as used in the treaty, meant all titles, inchoate as well as perfect, and equitable as well as legal.

It is not competent for the United States to exact the performance of conditions which the peculiar policy of another Government may have prescribed, and which may have been rendered both impolitic and impossible under our institutions and laws. The treaty operated upon the property of the inhabitants as it existed at the time; and, as no forfeiture had been attempted in the mode pointed out by the Spanish laws, before the change of sovereignty, the title became absolute in the baron, his assignees and heirs.

It is a curious fact, but little understood in the history of Louisiana, that this particular title was the occasion of the entire change in the policy and government of that colony, in regard to the concession of royal lands. From the period of the royal ordinance of 1754, confirmed by another ordinance of 1786, the power of granting lands was conferred exclusively upon the civil and military Government; of which the Governor General, the Baron de Carondelet, was the supreme judge and commander-in-chief. He was the representative of the King in the province, and, by a special provision of the laws of the Indies, was required to report his proceedings in that respect to the council of the Indies, at the end of every year, to be laid before his Catholic Majesty's ministers. In addition to this, the administration of the Governor, by other laws of the Indies, was subject to a peculiar process, called the *residencia*; which was an examination by officers appointed by the crown, into the official conduct of the Governor. All acts of Governors, Intendants, and Viceroy, which were not disapproved by a royal *cedula*, were considered as approved.

Every nation, as well as the tribunals of every country, are bound as an act of comity, as well as a principle of judicial construction, to presume that the laws of other countries are properly administered, and faithfully executed. Without the necessity of an application of this just maxim of general law, it is a fact well attested in history, that the Baron de Carondelet did undergo this peculiar examination; and that the only one of his official acts that was disapproved of by the King, was the execution of a slave, for which he was fined \$500, but promoted to a higher rank in the Spanish service. (See Martin's History of Louisiana.)

It appears, also, from certain documents obtained by the American minister at Madrid, and communicated to the State Department, that the Intendant General of Louisiana reported to his Catholic Majesty's Government this particular case, and complained that the provincial Treasury was not adequate to supply the means of executing the contract. The Intendant General says: "As it would have cost the Treasury \$125,000, it is not probable that the Baron de Carondelet, if he had held the obligations of the Intendancy, would have rendered it liable for a demand which there were no means to satisfy." The Intendant further remarks: "If the Inten-

dancy had possessed the right of distributing and granting lands, the project would never have been undertaken until his Majesty's decision had been made known." He finally proposes to the ministers in Spain, to suggest some mode in future to prevent such consequences, as there were no means of annulling such a contract and concession.

Although this communication was addressed to the Prince of Peace, and laid before his Majesty's ministers, the contract and concession was not disapproved; but, to prevent other contracts which might be burdensome to the provincial Treasury, a royal order was issued at the palace of San Lorenzo, dated October 22d, 1798, conferring on the Intendant General, the head of the Treasury Department, the right of conceding lands, because he was supposed to be better acquainted with the state of the finances and the ability of the *hacienda* to meet such requisitions.

The Intendant General, in the exercise of the power thus conferred, made a similar grant of 289,000 acres in Florida, to Don Fernando de la Maza Aredondo and son, and inserted, as a condition, that they should bring upon the land, within a short period, 200 Spanish families, which had not been performed at the date of the treaty of the 22d of February, 1819. It was not pretended, upon the trial of that case, that the condition had been complied with; it was, nevertheless, confirmed by the supreme court, upon the principles before adverted to, as applicable to this case.

I am, therefore, of opinion: 1st. That the Baron de Bastrop and those claiming under him have a valid title to the lands contained within the order of survey and concession.

2d. That this was his individual property at the date of the treaty, and was protected and exempted from the cession by the treaty itself.

JOS. M. WHITE.